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**THOMAS VINCENT GIRARDI**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
THOMAS VINCENT GIRARDI,  
Defendant.

Case No. 2:23-cr-00047-JLS-1

**UNOPPOSED *EX PARTE*  
APPLICATION FOR ORDER TO  
FILE OVERSIZED REPLY IN  
SUPPORT OF MOTION FOR  
ORDER OF INCOMPETENCY  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION  
OF COUNSEL**

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Thomas Vincent Girardi, through his counsel of record, Deputy Federal Public Defenders Craig A. Harbaugh, Georgina Wakefield, and J. Alejandro Barrientos, files this *ex parte* application for an order permitting the filing of the oversized and contemporaneously filed memorandum of points and authorities in support of his Reply in Support of Motion for Order of Incompetency. This application is based on the attached declaration of counsel. The government does not oppose this application.

Respectfully submitted,

**CUAUHTEMOC ORTEGA  
Federal Public Defender**

DATED: August 9, 2023

By /s/ *Craig A. Harbaugh*

CRAIG A. HARBAUGH  
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J. ALEJANDRO BARRIENTOS  
Deputy Federal Public Defenders  
Attorneys for THOMAS VINCENT GIRARDI

# **DECLARATION OF CRAIG A. HARBAUGH**

I, Craig A. Harbaugh, declare:

1. I am an attorney with the Office of the Federal Public Defender for the Central District of California. I am licensed to practice law in the State of California and I am admitted to practice in this Court. I represent Mr. Thomas Vincent Girardi in the above-captioned case.

2. On March 22, 2023, this Court entered an order for a competency evaluation of Mr. Girardi. (Dkt. 54) Defendant's motion regarding competency shall be filed by July 5, 2023, the government's opposition, if any, shall be filed by August 2, 2023, and any reply shall be filed by August 9, 2023. The date of the competency hearing shall remain scheduled for August 23, 2023, or as soon thereafter as the Court is available. (Dkt. 75).

3. The Court ordered that each party's psychiatric or psychological expert submit a written report addressing: "(1) defendant's history and present symptoms; (2) description of the psychiatric, psychological, and medical tests that were employed and their results; (3) the experts' respective findings; and (4) the experts' respective opinions as to diagnosis, prognosis, and (5) whether defendant is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." (Dkt. 54)

4. The Court imposes a 25-page limit on memoranda of points and authorities except where good cause is shown.

5. For the following reasons, there is good cause to permit Mr. Girardi to submit an oversized memorandum in support of his motion for a finding of incompetency:

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- a. The Supreme Court has “repeatedly and consistently recognized that ‘the criminal trial of an incompetent defendant violates due process.’” *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996), quoting *Medina v. California*, 505 U.S. 437, 453 (1992).
  - b. Moreover, “the consequences of an erroneous determination of competence are dire. Because [an incompetent defendant] lacks the ability to communicate effectively with counsel, he may be unable to exercise other ‘rights deemed essential to a fair trial.’” *Id.* at 364 (quoting *Riggins*, 504 U.S. at 139 (Kennedy, J., concurring))
  - c. In its reply, the defense must respond to government expert opinions from an neuropsychologist and neurologist. The length of their reports total more than 100 pages. In addition, the government adds a number of documentary and media exhibits to its opposition.
  - d. Accordingly, it is not practical to address the various points raised by the government without submitting a detail pleading.

6. The parties conferred regarding this application. The government is not opposed.

Executed on August 9, 2023, at Los Angeles, California.

/s/ Craig A. Harbaugh  
CRAIG A. HARBAUGH